

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VISHAL SINGH UPPAL, ) CASE NO. C06-0261-JLR  
Petitioner, )  
v. ) REPORT AND RECOMMENDATION  
MICHAEL CHERTOFF, et al., ) RE: INDEFINITE DETENTION  
Respondent. )  
\_\_\_\_\_) )

## **I. INTRODUCTION AND SUMMARY CONCLUSION**

15 Petitioner is a native and citizen of India who is being detained by United States  
16 Immigration and Customs Enforcement (“ICE”) pursuant to an order of removal that became final  
17 on September 1, 2005. On February 23, 2006, petitioner filed, pro se, a Petition for Writ of  
18 Habeas Corpus pursuant to 8 U.S.C. § 2241, challenging the constitutional and statutory authority  
19 of ICE to detain him. (Dkt. #4). Respondents contend that petitioner’s detention is warranted  
20 because ICE has received the necessary travel documents and his removal is likely in the  
21 reasonably foreseeable future. (Dkt. #14).

Having carefully reviewed the entire record, I recommend that petitioner's habeas petition

01 (Dkt. #4) be DENIED and respondents' motion to dismiss (Dkt. #14) be GRANTED.

02                   II. BACKGROUND AND PROCEDURAL HISTORY

03 Petitioner Vishal Singh Uppal is a native and citizen of India. (Dkt. #16 at L5-11). On  
04 November 16, 1996, he entered the United States at San Francisco, California as a B-2 non-  
05 immigrant visitor for pleasure with authorization to remain in the United States until April 15,  
06 1997. *Id.* On February 10, 1997, petitioner filed an I-598 application for asylum. *Id.* On June  
07 8, 1999, the former Immigration and Naturalization Service (“INS”) denied petitioner’s application  
08 for asylum finding him not credible due to “material inconsistencies between [his] testimony and  
09 application” and referred petitioner’s case to an Immigration Judge (“IJ”). (Dkt. #16 at R30). The  
10 same day, the INS issued a Notice to Appear charging petitioner with removal pursuant to section  
11 237(a)(1)(B) of the Immigration and Nationality Act (“INA”) because he remained in the United  
12 States longer than permitted. (Dkt. #16 at R88). On July 15, 2004, an IJ denied petitioner’s  
13 applications for asylum, withholding of removal, and protection under the Convention Against  
14 Torture, and ordered him removed to India. (Dkt. #16 at L224). Petitioner appealed the IJ’s  
15 decision to the Board of Immigration Appeals (“BIA”). On September 1, 2005, the BIA affirmed  
16 the IJ’s decision and dismissed the appeal. (Dkt. #16 at L264).

17                   On February 23, 2006, petitioner filed the instant habeas petition. (Dkt. #4). On March  
18 13, 2006, petitioner also filed a Petition for Review and a Motion for Stay with the United States  
19 Court of Appeals for the Ninth Circuit. (Case No. 06-71454). The same day the Ninth Circuit  
20 entered a temporary stay of removal. On June 9, 2006, the Ninth Circuit dismissed the appeal  
21 based on lack of jurisdiction because petitioner’s appeal was not filed within 30 days from the  
22 issuance of the BIA’s September 1, 2005, order.

### III. DISCUSSION

The post-removal-detention statute, INA § 241(a), 8 U.S.C. § 1231(a), provides for the mandatory detention of aliens awaiting removal from the United States for an initial period of three months. This three months may be followed by an additional three months discretionary detention during which detention remains presumptively valid. *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 2505, 150 L. Ed. 2d 653 (2001).

In *Zadvydas*, the Supreme Court explained that after this six-month period, the alien is eligible for conditional release upon demonstrating that there is “no significant likelihood of removal in the reasonably foreseeable future.” *Id.* Nonetheless, the six month presumption “does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The petitioner has the burden of coming forward with “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* Then the burden shifts to respondents to produce evidence which could rebut petitioner’s showing. *Id.*

In this case, petitioner has been in ICE custody following a final order of removal since November 17, 2005. Thus, petitioner's six-month presumptively reasonable removal period expired on or about May 17, 2006. Respondents contend that petitioner's continued detention is warranted because ICE has secured travel documents for his removal to India and the only thing preventing his removal is his Petition for Review and related temporary stay of removal. (Dkt. #14 at 6). However, the Ninth Circuit has since dismissed petitioner's appeal and stay of removal. Accordingly, there are no longer any barriers to petitioner's removal. As petitioner has failed to

01 support any assertion that his removal is not reasonably foreseeable, the Court must deny habeas  
02 relief. *See Zadvydas*, 533 U.S. at 701; *see also Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137  
03 (S.D. Cal. 2001)(finding that petitioner had not met his burden under *Zadvydas* where petitioner  
04 failed to show any barriers to his repatriation to Pakistan).

#### IV. CONCLUSION

06 For the foregoing reasons, I recommend that respondents' motion to dismiss be granted,  
07 and that this action be dismissed. A proposed Order accompanies this Report and  
08 Recommendation.

09 DATED this 12th day of June, 2006.

Mary Alice Theiler  
Mary Alice Theiler  
United States Magistrate Judge